

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 449 OF 2003

The State of Maharashtra ... Applicant

versus

Abbas Firoz Kanchwala @ Takiwala... Respondent

...

WITH

CRIMINAL REVISION APPLICATION NO. 450 OF 2003

The State of Maharashtra ... Applicant

versus

Abrar Mazahar Mulla ... Respondent

...

Mr. Shekhar Naphade, Special Public Prosecutor,
with Mr. V.B. Kejrewala, A.P.P., for the
Applicant in both CrI.Revn.Appls.

Mr. P.P. Hudalekar with Ms. Shilpa Joshi, for the
Respondents in both CrI.Revn.Appls.

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CORAM : A.M.KHANWILKAR, J.

29th October 2004

ORAL JUDGMENT :

1. Both these applications can be disposed of together by common Judgment. These applications are filed by the State of Maharashtra questioning the order passed by the Third Additional Sessions Judge, Nasik, dated August 20, 2003, enlarging the Respondent in the respective applications on bail on certain conditions. The Respondent in the respective applications have been named as accused. The prosecution case is that the deceased was a small female child of 4 years of age by name Ume -Salma. She was residing with her parents in the same locality of Respondent Abrar Mazahar Mulla. The said Abrar Mazahar Mulla is stated to be of tender age, about 14 years, at the relevant time. He used to tease and harass the said Ume - Salma. It is not necessary to dilate on the further details, except to mention that on 6th April 2003, while the said child Ume - Salma was playing outside the house, the Respondent in the respective applications came there and dragged her and took her on their scooter. Thereafter, the said Ume - Salma was found dead lying near

the graveyard of Parsee community, having sustained several injuries on her body. From the statements of witnesses recorded during investigation, the prosecution case is that the said Respondents were last seen together before the dead body of Ume -Salma was found. The offence was registered as CR.No. 37/2003 punishable under sections 363, 364, 376, 302, 201 read with section 34 of the Indian Penal Code. The Respondent in the respective applications were arrested in connection with the said offence on 6th April 2003 and were produced before the Chief Judicial Magistrate, Nasik - The Presiding Officer of the Juvenile Justice Board - and were sent to remand home from time to time. The Respondents had moved application for bail under section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act of 2000"), which was, however, rejected on 23rd April 2003. Against the said decision, the Respondents carried the matter in appeal, which was also rejected on 30th April 2003. Once again, two separate bail applications were filed by the Respondents, which were rejected by the learned Chief Judicial

Magistrate on 30th July 2003. Against this decision, the Respondents carried the matter in separate appeals before the Third Additional Sessions Judge, Nasik, which, in turn, were allowed by the impugned decision dated 20th April 2003. While allowing the appeals and granting bail to the Respondents, the concerned Sessions Judge has observed that bail provision under section 12 of the Act of 2000 recognises right to be released on bail of juvenile in conflict with law, except in the circumstances provided by the said section. It further observed that the investigation was complete and charge sheet has-been filed and there was no possibility of evidence being tampered or influencing the prosecution witnesses. It then went on to observe that, in such a situation, by releasing the Respondents on bail would not "defeat the ends of justice". The Court below also observed that the Respondents were school going children in the age group of 14 to 15 years and came from good families, coupled with the fact that none of them had any criminal antecedents. It then observed that there was nothing to suggest that if the Respondents were to be released on bail,

it would bring them in association of known criminals or that would expose them to moral, physical or psychological danger. It also noted that it was not the case of the prosecution that the Respondents were suffering from psychological disorder. Accordingly, the lower Court found that by releasing the Respondents on bail, it would not expose them to moral danger. It is also noticed that no Board was constituted or established under the Act for the conduct of the proceedings pending against the Respondents. It further observed that merely because there was public outcry in relation to the incident in question, that cannot be the sole basis to deprive the Respondents of being released on bail during the conduct of the enquiry pending against them. On the above considerations, the appellate Court chose to release the Respondent in the respective applications on bail on the following terms :

" 1) Criminal Appeal No. 67/2003 and 71/2003 are allowed.

2) Both the applicants are directed to be released on bail, on their guardian executing bond, on behalf of their sons, in sum of Rs.20,000/- each with two sureties in the like amount.

3) Bail in Lower Court.

4) Copy of this order be kept in Cri.Appeal No. 71/2003.

5) Appeals are disposed of."

2. The principal contention canvassed before this Court on behalf of the State by Mr. Naphade, learned Senior Counsel, is that the Court below has misconstrued the purport of section 12 of the Act of 2000. Section 12 of the Act of 2000 reads as follows :

"12. Bail of juvenile.-- (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

It is submitted that there are three exceptions provided for in section 12 for refusing bail to a person, who is apparently a juvenile; Inasmuch as, if there appear reasonable grounds for believing that the release is likely to bring him in association with any known criminal; or expose him to moral, physical or psychological danger; and lastly, his release would "defeat the ends of justice". According to Mr. Naphade, the Court below, while releasing the Respondents on bail, has only addressed itself to the former exceptions, but has glossed over the objection taken on behalf of the State in the context of the third exception - that having regard to the nature of crime, no bail can be granted as release of such person would "defeat the ends of justice". Learned Counsel, in all fairness, brought to my notice decisions of various High Courts, including of our High Court, which had occasion to consider prayer for grant of bail

under section 12 of the Act of 2000. Reference is made to the decision of the Rajasthan High Court reported in 1996 Cri.L.J. 743 in the case of Mata alias Manohar Singh v. State of Rajasthan, which has taken the view that bail to a delinquent child is a rule and a mandate of the Act, irrespective of the nature and seriousness of the offence committed by him. In that case, the lower Court had rejected the bail application on the ground of nature and seriousness of the offence. The High Court observed that the same was hardly relevant for refusing bail to a delinquent under the provisions of the Act. Reference is also made to decision of the Patna High Court reported in 1998 (2) Crimes 481 in the case of Chandra Shekhar Kumar v. State of Bihar, which has more or less towed the view taken by the Rajasthan High Court that bail to a juvenile is the mandate of the Act. Reference is also made to another decision of Rajasthan High Court in the case of Jaif Ahmed Sheikh v. State of Rajasthan reported in 2004 Cri.L.J. 3272, wherein it has been observed in para 5 that section 12 leaves no option with the Court except to enlarge the accused on bail of any offence and

in any circumstance - the moment accused is able to show that he was below 18 years of age at the time of the offence. Reference is then made to decision of our High Court in the case of Dattatray G. Sankne v. State of Maharashtra & ors., reported in 2003(3) Crimes 311. In para 5 of this decision, this Court has observed that on plain language of section 12 of the Act, it is clear that in case a juvenile is involved in any criminal offence, the normal rule would be to grant bail and the Board is empowered to release the juvenile on bail unless it comes to the conclusion that by releasing such a person on bail, he would come in contact with known criminals or that his life is likely to be in danger. It is further observed that the said provision (section 12) is made to ensure that large number of juvenile delinquents who do not have a regular place of residence or a family or abode are not brought to the mercy of known criminals and are as a result exploited by these criminals for their own ends. My attention is then drawn to the decision of Allahabad High Court reported in 2001 Cri.L.J. 350 in the case of Tajuddin s/o Mohd. Yunus v. State of U.P.

The Allahabad High Court has observed that refusal of bail to a juvenile was only on the ground that if he is released, it is likely to bring him into association with any known criminals. Indeed, in para 11 of the same decision, the Allahabad High Court has observed that three conditions laid down in section 18 of the Act of 1986 (Section 12 of the present Act of 2000) are independent and, the bail may be refused if any of the conditions referred to above exist. Emphasis was placed on this observation to contend that the factor of "defeat the ends of justice" cannot be lightly considered by the Court exercising power under section 12 of the Act. In that case, however, the prayer for bail was rejected as it was noted by the Court that the applicant therein had criminal history and his tendency was to indulge in criminal act if released on bail which would expose him to moral danger and would also defeat the ends of justice.

3. According to Mr. Naphade, none of these decisions has had occasion to decide the question that is raised in the present applications. He

submits that if the factor of "to defeat the ends of justice" is an independent consideration to be borne in mind, then it necessarily follows that the Court is obliged to record its satisfaction so as to grant bail. According to him, for considering the plenitude of expression "defeat the ends of justice", it will have to be borne in mind as to the natural setting in which section 12 has been placed in the Act. It is submitted that merely because the person involved is a juvenile in conflict with law, that cannot be the sole basis to enlarge him on bail, as has been widely stated in most of these decisions. According to him, the scheme of the Act would indicate that it has been enacted with a view to adopt a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act. In his submission, if the nature of offence is serious, that is a valid consideration for taking the view that releasing the juvenile in conflict with law on bail would defeat the ends of justice. For this purpose, learned Counsel took me through all the

provisions of the Act and in substance contended that the scheme of the Act in no way suggests that the juvenile in conflict with law will have to be let free, but he will have to suffer the criminal action and can be sentenced for offences punishable under the Indian Penal Code, if found guilty. According to him, during the pendency of such criminal action, the only protection afforded to the juvenile in conflict with law is to keep him in Observation Home or Special Home. Referring to section 3 of the Act, it was argued that provision has been made that where during the continuation of inquiry in respect of a juvenile, who ceases to be a juvenile, even then the inquiry is required to be continued and orders are required to be made in respect of such person as if such person had continued to be a juvenile or a child. The nature of orders that may be passed by the Board regarding juvenile are provided for in section 15 of the Act. Adverting to those provisions in the Act, it was contended that the statement of law occurring in the aforesaid reported decisions is too wide as there can be occasion where the nature of offence is so heinous and gruesome and the material on record

would support the position that the child involved knew as to what he was doing was morally wrong, in such a case, releasing the person on bail would be nothing but to "defeat the ends of justice". Learned Counsel has placed reliance on the provisions of section 82 of the Indian Penal Code to contend that nothing is an offence which is done by a child under seven years of age, which falls in the exception and there will be presumption in law that the act of such person is not an offence. In contra-distinction to this provision, section 83 of the Code provides that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct at the relevant time. It is contended that in the present case, when the offence has been committed, the Respondents were above the prescribed age under section 82 as well as section 83 of the Code and although they are juvenile, being below 18 years of age, there can be no presumption that the act committed by them is innocent. In such a case, learned Counsel contends, to release a person on bail,

though below 18 years of age, would defeat the ends of justice. Learned Counsel has invited my attention to the recommendations made by the Indian Jail Committee, 1919-1920, which was set up to review the conditions prevalent in jails. The said Committee came across startling episode of many children confined in jails and prisons were confined along with adult prisoners. The Committee also noted a case of a small child, whose age had been originally marked as six but afterwards changed to seven years, who was under detention on a charge of cheating in the under-trial yard of a district jail in Bengal. The Committee criticised the confinement of children in prisons and jails in para 367 of its report in the following words :

" a child who commits crime cannot have the same knowledge and realisation of the nature and consequences of his act as an adult. The cold-blooded character of the crimes sometimes committed by the children may generally be attributed to this lack of realisation, just as boys are often cruel from mere thoughtlessness. It is well known that full recognition of the laws of property comes gradually and that offences against property committed by young persons are largely due to the lack of suitable training and to bad upbringing.... proper training will, in the great majority of cases be successful. But

such training cannot be provided in a prison. It should be given in a special institution devised and equipped for the purpose. Moreover, it is undesirable to familiarise the young with the sights of prison life or to blunt the fear of prison which is one of the most powerful deterrents for crime."

The Committee then went on to make recommendations to take various measures regarding the child offenders, which are as follows :

" (a) The child criminal is mainly the victim of adverse circumstances, and, therefore, he is entitled to a fresh chance under better surroundings. At this stage the habit do not become fixed; so reformation is easier.

(b) The provisions of the English Law on the subject should be generally adopted throughout India.

(c) Children's Courts should be established. Where the number of children to be dealt with is small, the ordinary magistrate should sit at special hours, and, if possible, in a separate room to hear charge against child offenders.

(d) The magistrate should be given a clear understanding of the fact that he is dealing with a case of special character, in which he is expected to assume a different role, from different standpoint and with a more parental attitude.

(e) The appointment of one special magistrate, in a large does more harm than good because of the inconvenience

caused in taking children to long distances from their homes to appear before special magistrates.

(f) In order to arrive at a decision the magistrate should have before him information regarding child's home, his habits and circumstances, which led him into the crime. In the meantime the court should be adjourned and the child should be released on bail or sent to a remand home.

(g) The scope of release on probation of good conduct under the Code of Criminal Procedure should be widened and more discretion should be given to Courts to release children under that provision. It should be combined with a stipulation regarding payment of fine, damages or costs.

(h) Offenders so released should be placed under the supervision of a probation officer for a fixed period, with such further conditions and penalties as the Court deems fit.

(i) The probation officer should not be given more cases than he can look after properly and if the number is great it should not be scattered over too large an area. Voluntary probation workers should not be entrusted with more than two cases.

(j) The reformatory schools and such other institutions should not be located in jail building or near them. Properly planned buildings on cottage system should be provided.

(k) Inmates should be carefully trained in habits of self-control and self-reliance and gradually given more freedom and independence.

(l) Contact with pupils discharged from a reformatory should be kept to render them

any help or assistance possible in their after-career. Record should be kept of the members who turn out well or ill in after-life.

(m) Offenders should be examined to ascertain their mental and physical conditions before committal and immediately after that in the reformatory. Mentally defectives should be sent to institutions specially provided for them and physically defectives should be hospitalised.

(n) The potential criminal should be removed from the bad environments, before he actually comes within the ambit of criminal law."

Consequent to the said report, the Children Acts were legislated by different States. In similar manner, the Bombay Children Act was enacted first in 1924 and thereafter in 1948. In the decision of the Apex Court in Sheela Barse's case, reported in A.I.R. 1986 S.C. 1773, the Apex Court had occasion to consider the plight of children below the age of 16 years detained in jail in different states of the country. The Parliament thereafter enacted the Juvenile Justice Act, 1986, the purpose of which was to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of

delinquent juveniles. It is not necessary for us to make reference to the provisions contained in the said Act, except to observe that the scheme of the present Act of 2000, with which we are concerned, which in turn has repealed the Act of 1986, makes elaborate provisions covered under the Act of 1986 and attempts to make further reviews. My attention was invited to decision of Division Bench of our High Court reported in 1989 Mh.L.J. 604 in the case of Sarita Narayan Sawant and another v. State and others, wherein the Court had held that even when a delinquent juvenile is charged for an offence punishable with death or imprisonment for life, a delinquent juvenile cannot be tried by a Court of Session because the Code of Criminal Procedure, 1973 makes such provision under section 27 thereof. In such case, the juvenile will have to be dealt with only under the provisions of the Juvenile Justice Act, 1986 and the Court created thereunder, being a special law. Reliance is also placed on the decision of the Apex Court reported in A.I.R. 1977 S.C. 2236 in the case of Hiralal Mallick v. State of Bihar. My attention was invited to paras 7 and 8 of this

decision, wherein the Apex Court, while referring to the exposition contained in Archbold in Criminal Pleading, Evidence and Practice, noted that the child under 14 years is presumed not to have reached the age of discretion and to be *doli incapax*; but this presumption may be rebutted by strong and pregnant evidence of a mischievous discretion ... for the capacity to commit crime, do evil and contract guilt, is not so much measured by years and days as by the strength of the delinquent's understanding and judgment. In para 8, the Apex Court has adverted to the Cross & Jones in "An Introduction to Criminal Law", wherein it is observed that the Crown cannot, as in most other cases, rely on the *actus reus* as evidence of *mens rea*; other evidence that the child knew it was doing something morally wrong must be adduced. In para 10, the Apex Court has then observed that the Indian Legal System must be sensitized by juvenile justice. It is further observed that when a near-pubescent accused is marched into a criminal court, the Bench and the Bar will be alerted about *jus juvenalis*. It is further observed that the compassion of the penal law for juvenescents cannot be reduced to

jejunity by forensic indifference since the rule of law lives by law-in-action, not law in the books. Reliance was also placed on the decision reported in (1981) 4 S.C.C. 210 in the case of Raghbir v. State of Haryana. In para 17 of this decision, the Apex Court while considering the provisions of Haryana Children Act and the central Children Act, 1960, observed that the purpose of enacting the same was to give separate treatment to delinquent children in trial, conviction and punishment for offences including offences punishable with death or imprisonment for life. Reliance was also placed on the decision of Kerala High Court reported in 1988 Cri.L.J. 1375 in the case of M. Narayanan and another v. Chellan Kunhambu and another. In para 6 of this decision, the Court observed that the criminal Court or for that matter any Court, holds the scales of justice even and dispassionately. But its role is not passive. Impartiality is not indifference. Court has a positive role in the criminal justicing system. It must live upto its responsibilities. Unmerited acquittals lead to miscarriage of justice, as much unmerited convictions. Reliance

was placed on these observations to contend that unmerited order of acquittal leads to miscarriage of justice, which is "to defeat the ends of justice". Reliance was then placed on the decision of the Apex Court reported in A.I.R. 1977 S.C. 965 in the case of The Chairman, Board of Mining Examination and Chief Inspector of Mines, and another v. Ramjee. In para 5, the Court had occasion to make general observation as to the purport of expression "justice". It observed that law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as social engineering depends on its sensitized response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is simple justice to the meaning of all legislations. Reliance was placed on exposition in para 17 of the decision of the Apex Court in the case of Babu Singh and others v. The State of Uttar Pradesh reported in A.I.R. 1978 S.C. 527. It is observed that reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the

bi-focal interests of justice to the individual involved and society affected. Relying on these observations, it was contended that the seriousness of the offence and the nature of the crime are relevant factors while keeping in mind interest of the society affected and which can be the basis to hold that release on bail of such person would defeat the ends of justice. Reference is then made to the decision of the Apex Court reported in (2000) 7 S.C.C. 296 in the case of Delhi Administration v. Gurdip Singh Uban and others. Reliance was placed on the observations in para 23 of this decision, wherein the Apex Court has noted that the words "justice" and "injustice" are sometimes loosely used and have different meanings to different persons particularly to those arrayed on opposite sides. It has referred to the proverb, "one man's justice is another's injustice". In the same para, quotation of Justice Cardozo is reproduced and it reads thus :

" The web is tangled and obscure, shot through with a multitude of shades and colours, the skeins irregular and broken. Many hues that seem to be simple, are

found, when analysed, to be a complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them, have never wholly succeeded."

On the above basis, the learned Counsel contends that the order as passed by the Court below releasing the Respondents on bail be set aside and the Respondents be taken into custody. According to him, the offence is serious one, in which the deceased was a child of only 4 years, who has been raped and mercilessly assaulted and she succumbed to the injuries. The prosecution case, if established, would clearly indicate that the act of the Respondents though below 18 years of age cannot be said to be mindless or thoughtless. Whereas the same was inhuman, for which reason, releasing such person on bail would defeat the ends of justice.

4. On the other hand, Mr. Hudlikar, for the Respondents, submits that there is no infirmity in the approach of the Court below in releasing the Respondents on bail. He submits that the

Court below has recorded good reasons and has found that none of the exceptions provided by section 12 of the Act were attracted so as to refuse bail to the Respondents. He submits that it is not necessary for this Court to go into the wider issues raised on behalf of the Applicant State, especially when in the present case, the Respondents have enjoyed bail since August 2003 and there is nothing on record to even remotely suggest that they have abused any of the conditions of bail. On the other hand, going by their present performance, it appears that their family members have taken serious efforts in ensuring that the children are reformed and come into the mainstream. The progress report card of Respondent Abrar Majhar Mulla was produced during the arguments for the year 2003-2004, which indicates that he has done reasonably well in the 10th standard examination conducted by the School. According to Mr. Hudlikar, the purpose of the Act of 2000 is to protect the child from being entangled with the hardened criminals and also to ensure reform of such children. According to him, there was no material before the Court that if the Respondents were released,

would come in contact with the known criminals nor any material has come on record to even remotely suggest that after their release, they have been exposed to any dangerous situation. He further submits that merely because the Respondents have been named in the crime, which is stated to be a serious or heinous one, that by itself cannot be the basis to deny bail to such person. He submits that even under the ordinary law, the presumption is that the accused is innocent till proved to be guilty, and applying that yardstick, the Court will have to consider the prayer for bail pressed into service on behalf of the Respondents. He submits that the parameters for considering prayer for bail are entirely different as it is pre-conviction stage. According to him, as nothing has come on record that after the release of the Respondents on bail, they have abused the same, this Court will have to reject the present applications by adopting humane approach for which purpose the Act of 2000 has been enacted. The learned Counsel has relied on the decisions, which are also referred to by Mr. Naphade and has contended that in the cases of the kind with

which we are concerned, the Court should enlarge the juvenile in conflict with law on bail. In addition, reliance is placed on the decision of the Madhya Pradesh High Court reported in 2001 Cri.L.J. 214 in the case of Rahul Mishra v. State of M.P.

5. Having considered the rival submissions and applying the principles deduced from the decisions pressed into service and, more particularly, in view of the plain language of section 12 of the Act, I have no hesitation in taking the view that the mandate of section 12 is to release the juvenile in conflict with law on bail, except when the Court is satisfied that if he is so released, there appear reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger, or that his release would defeat the ends of justice. In other words, there is force in the argument canvassed on behalf of the Applicants that the Court has duty to satisfy itself that releasing of such person on bail, amongst others, would not defeat the

ends of justice, for the three exceptions provided in section 12 are mutually exclusive. Indeed, the expression "defeat the ends of justice" would encompass the fact that the person was allegedly engaged in an offence, which was very serious one.

6. In the present case, insofar as the first two conditions are concerned, clear finding has been recorded by the Court below that there was no material to support the position that if the Respondents were released, there appear reasonable grounds for believing that they are likely to be brought into association with any known criminal or expose them to moral, physical or psychological danger. The said finding is not in issue before this Court. The limited controversy is whether in the fact situation of the present case, the third exception is attracted. In other words, upon releasing the Respondents on bail will it entail in "defeating the ends of justice". Even with regard to this condition, to my mind, the Court below has recorded its satisfaction that if the Respondents were to be released on bail, it will not defeat

the ends of justice. Amongst others, the Court below has noted that the investigation was completed and charge sheet was filed. Further, there was nothing to suggest that there was possibility of tampering or influencing the prosecution evidence. It is also observed that the Applicants are of tender age and belong to good family without any criminal antecedents. All these factors are germane to consider whether upon releasing the Respondents, it will result in defeating the ends of justice. The grievance of the Applicants, however, is that, having regard to the nature of crime and the same being heinous and well executed coupled with the fact that there was material to indicate the complicity of the Respondents, releasing the Respondents on bail will entail in defeating the ends of justice from the stand point of the Society in general and the victim and her family in particular. This submission, to my mind, clearly overlooks the well-established position that for considering the prayer for bail, although the nature of charge is a relevant factor, but there can be no basis to presume that the accused is guilty of the offence and more so in a case like

the present one which hinges on circumstantial evidence. It will be also useful to advert to the observation made by the Apex Court in Babu Singh's case (supra). In para 15, it is observed that another factor which is relevant is whether the Course of Justice would be thwarted by the accused, who seeks the benignant jurisdiction of the Court to be freed for the time being. While considering that aspect, in para 16, the Apex Court went on to observe that the legal principle and practice validate the court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. In the present case, that inquiry has been made and a finding reached by the Court below that upon releasing the Respondents, there is no possibility of tampering the prosecution evidence or otherwise. That view is a possible view and there is nothing on record to suggest to the contrary. Moreover, in para 18 of the same decision, the Apex Court has observed that it makes sense to assume that a man on bail has a better chance to prepare or present his case than one remanded in custody and if public justice is to be promoted, mechanical

detention should be demoted. The Apex Court has then observed that community roots of the applicant ought to be stressed. In para 13, the Apex Court has observed that the principal rule to guide release on bail should be to secure the presence of the applicant who seeks to be liberated, to take judgment and serve sentence in the event of the court punishing him with imprisonment. In the present case, the Court below has recorded a finding that the Respondents belong to good families and have roots in the society without any criminal antecedents. Applying the principle stated by the Apex Court in this decision, to my mind, no fault can be found with the conclusion reached by the Court below that by releasing the Respondents on bail, it will not result in defeating the ends of justice. Even the opinion recorded by the Court below that merely because the offence is serious and aroused public outcry, that by itself cannot be the basis for rejecting the prayer for bail, needs to be upheld. Viewed in this perspective, no interference is warranted with the order as passed by the Court below.

7. Be that as it may, the Respondents were in custody for more than four months before being released on bail. Moreover, the investigation is also completed, coupled with the fact that no Board was still constituted or established under the Act of 2000 to deal with the inquiry. Besides, the order in question was passed as back as in August 2003. In that sense, more than one year has passed from the date of release of the Respondents. There is nothing on record to even remotely suggest that the Respondents have misused the bail so granted. On the other hand, as rightly contended by the Counsel for the Respondents, the Respondents have made attempt to reform and come in the mainstream of the society. If it is so, there is no reason to overturn the order as passed by the Court below in the fact situation of the present case.

8. Accordingly, both these applications deserve to be rejected. Hence, dismissed. However, the State is directed to take immediate steps for constitution of the Board, if already not done; and the Board in turn shall expedite

the inquiry against the Respondents, which shall be finally disposed of, preferably within one year from the receipt of writ of this Court.

(A.M.KHANWILKAR, J.)